IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2009 of 1991

with

SPECIAL CIVIL APPLICATION No 2010 of 1991

HON'BLE MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE CINEMA

Versus

HIMANSU KUNJVIHARI TRIVEDI

Appearance:

1. Special Civil Application No. 2009 of 1991
   NOTICE SERVED for Petitioner
   MR HARIN P RAVAL for Respondent
2. Special Civil Application No. 2010 of 1991
   NOTICE SERVED for Petitioner
   MR HARIN P RAVAL for Respondent

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. Both these petitions under Article 227 of the Constitution of India are filed by the same petitioner against the same respondent to challenge two orders of the Labour Court, Ahmedabad, whereby Recovery Application No.2183/1987 and Reference LCA No.1448/1987 were restored and reopened after the delay of more than two years upon the applications of the respondent.

2. None appears for the petitioner even as special notices were issued and served upon the petitioner as the learned Advocate Mr.Y.P. Adhyaru who initially appeared for the petitioner had ceased to practice in this High Court.

3. Learned counsel Mr.Harin P. Raval vehemently argued that the orders in favour of the respondent were required to be sustained mainly on the ground that the respondent had withdrawn his recovery application and reference case pending in the Labour Court upon the oral understanding arrived at with the petitioner, and the petitioner had failed to abide by the promises of making payment to the respondent. He submitted that the Labour Court has inherent powers to restore the proceedings in such circumstances and the Labour Court had condoned the prolonged delay in absence of even formal appearance by the petitioner before the Labour Court in the proceedings of the miscellaneous applications.

4. It clearly appears from the record that the respondent had clearly, and in writing, withdrawn his recovery application as also the reference case pending before the Labour Court. At that time he appears to have been represented by his Union representative also and it is also a relevant fact that the respondent professes to have been Assistant Manager for 8 years under the petitioner. After more than two years of such conscious withdrawal and disposal of the recovery application as well as the reference case, the applications for condonation of delay and restoration of the cases appear to have been filed.

5. It also clearly appears from the impugned orders of the Labour Court that neither the original orders by which the cases were disposed of were exparte, nor were sufficient reasons placed before the court to condone the delay, nor had the court relied upon any legal provision to exercise the power. The applications for restoration were admittedly made under Rule 26-A of the Industrial Disputes (Gujarat Rules), 1961 which is applicable in cases of exparte orders and awards. In these facts neither the applications of the respondent appear to be

bonafide nor was there any legal ground, justification or jurisdiction to pass the impugned orders. It is therefore necessary that the impugned orders are set aside.

6. Accordingly both the petitions are allowed. The impugned order dated 7.1.1991 passed by the Labour Court in Misc. Application No.178/90 in Original Recovery Application No.2183/87, as also the order dated 7.1.1991 of the same Court passed in Misc. Application No.177/90 in Original Reference No.1448/87 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[D.H. WAGHELA J.]

ar